COMMONWEALTH OMBUDSMAN

Public Interest Disclosure Act 2013

Procedures for facilitating and dealing with public interest disclosures

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Introduction

This document sets out the procedures for facilitating and dealing with public interest disclosures. This includes:

- responding to enquiries from agencies and potential disclosers about the public interest disclosure (PID) scheme
- processing notifications and considering extension requests from agencies
- assessing and allocating disclosures made to this Office under the *Public Interest Disclosure Act 2013* (PID Act)
- conducting disclosure investigations under the jurisdiction of the PID Act or the *Ombudsman Act 1976* (Ombudsman Act)
- assessing and investigating complaints made under the Ombudsman Act about agencies' handling of disclosures (PID handling complaints).

1. PID Act

The Office of the Commonwealth Ombudsman (OCO) has the following functions under the PID Act:

- authorised internal recipient of a disclosure – for disclosures that do not relate to this Office, a disclosure can be made to this Office if the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman (s 34)
- handling PIDs that are allocated to the Ombudsman
- assisting agencies in relation to the operation of the PID Act and the PID scheme
- conducting educational and awareness programs relation to the PID scheme
- determining standards for dealing with disclosures, conducting investigations and preparing investigation reports
- reporting annually on the operation of the PID Act
- determining requests from agencies for extensions of time to finalise disclosure investigations.

2. Ombudsman Act

The OCO can investigate complaints about agencies' handling of disclosures under the Ombudsman Act. It is important to note that:

- we are empowered to decline to investigate a complaint (s 6 of the Ombudsman Act)
- an investigation of a complaint about the handling of a disclosure by an agency is not a reinvestigation of the disclosure – the OCO generally does not reinvestigate the issues raised in a PID and sometimes does not have jurisdiction to investigate the subject matter of a PID
- we cannot take any action that would cause an agency to set aside a lawful decision under the PID Act or reopen a PID investigation or change investigation findings, this is because the PID Act does not provide a mechanism for the reopening of a finalised PID investigation unless there is a clear jurisdictional (legal) error.

3. PID Team

The PID Team is responsible for exercising various functions under the PID Act and general administrative functions, including:

- responding to enquiries about the PID Act and the PID scheme from agencies and potential disclosers
- receiving, assessing and allocating disclosures
- processing notification forms from agencies regarding allocation of disclosures and decisions not to investigate (s 48 of the PID Act)
- determining requests for extensions of time to complete disclosure investigations
- coordinating the Office's annual reporting on the operation of the PID Act (there is a separate guide (A2274586) for this process in Objective).

Outgoing correspondence:

- when corresponding with **agency representatives**: officers are to provide their full name and direct phone number (0X XXXX XXXX). However, all email correspondence should be via PID@ombudsman.gov.au or where relevant, via a dedicated PID email account [redacted].

- when corresponding with person's other than agency representatives, officers should provide their first name only, OCO's general contact number (1300 362 072) and all email correspondence should be via PID@ombudsman.gov.au or where relevant, via a dedicated PID email account [redacted].

4. Appointments and delegations

The Ombudsman has issued instruments of appointment and delegation under the PID Act.
If you are deciding about whether a disclosure of information is an internal disclosure, you must be listed as an Authorised Officer on the instrument of appointment. If you are not, discuss this with the PID Team.

5. Secrecy and confidentiality

Under the PID Act, criminal penalties apply to the inappropriate use and disclosure of:

- **Identifying information (s 20(1)(b))** – information that was obtained by any person in their capacity as a public official and that is likely to enable the identification of a person as someone who has made a disclosure.
- **Protected information (s 65(1))** – information obtained in the course of conducting a disclosure investigation or in connection with the performance of a function, or the exercise of a power, by a person under the PID Act.

It is important to note the secrecy and confidentiality provisions of the PID Act apply in addition to the confidentiality provisions in the Ombudsman Act.

5.1 Observing confidentiality when communicating about PID matters

Agencies will normally have a specific area that deals with PID matters, and our contact with an agency should generally be limited to that specific area (or to any person nominated by the agency's principal officer). If unsure, contact the PID Team to confirm agency contact arrangements.

Discussions about PID matters should ideally be held in an office away from the main work area.

All PID investigation email correspondence should be marked 'Official Sensitive' as it will generally include information that would be expected to cause limited damage to an individual, organisation or government generally, and is the appropriate classification given the secrecy provisions of the PID Act.

6. Enquiries from agencies and potential disclosers

Enquiries may be made directly to the PID Team by email to PID@ombudsman.gov.au or may be received by intake staff via 1300 362 072 or OCO's online complaint form. Intake staff will notify the PID Team of any PID-related contacts received via these means (see below).

6.1 PID enquiries – Agency representatives

Agency representatives can contact our Office with general enquiries about the PID Act. This can include specific enquiries related to the application of the PID Act, PID notifications, PID extension of time requests, s 48 decisions and PID annual reporting requirements, or more general enquiries about agency administration of the PID scheme, or about our Office's educational information and activities.

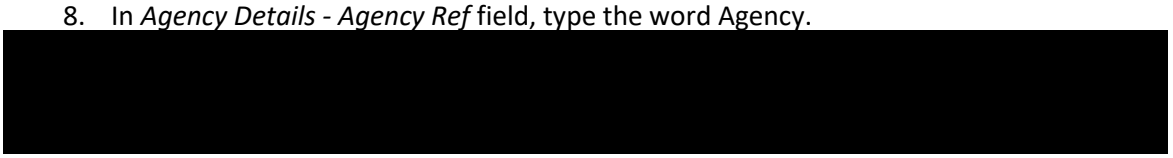
Agency enquiries are registered as a Category 1 (*Cat 1*) approach in Resolve.

Registering an agency representative enquiry in Resolve

1. Select *Find Person* > search using the relevant details.
2. If there is no person record, select *New Person* and create a record, then select *New Approach* and enter the relevant details.

3. If a Person Record already exists, double click on the name and select *New Approach* and enter the relevant details.

4. Complete all mandatory fields with relevant details.
5. When you create a *New Approach* several fields will be auto-populated, including *Category*, *Received Date* (defaults to the date the approach is created)*, Due Date* and *Assigned to* (defaults to the person creating the approach). If the *Received date* is not the date the approach is created, ensure you update this field with the correct date.
6. In *Caller Details - Organisation* field, enter the agency name.
7. In *Agency Details - Agency* field, enter OMBPID (Ombudsman PID). OMBPID is the Resolve code for all PID related enquiries.
8. In *Agency Details - Agency Ref* field, type the word Agency.



9. Complete *How Received*, *How Found* and *Sensitivity* fields (select *Sensitivity > PID* for all agency enquiries).
10. Once all the data has been entered, it should look like this:

11. Enter a brief description of the enquiry and any action taken in the *Initial Approach details* field.

12. Save the record.

13. In *General Details* > select the most appropriate PID issue to describe the type of enquiry. In *Cause* > select *Not Determined*. In *Outcome* > select *PID > Advice Provided*.

14. Record all actions and ensure all relevant documents are attached to the record.
15. Close the record.

6.2 PID enquiries – Disclosers/Potential disclosers

Potential disclosers may contact our Office to make a disclosure or to enquire about how to make a disclosure. Additionally, disclosers may contact our Office to make a complaint about an agency's handling of their disclosure.

All enquiries of this nature are registered as a Category 2 (*Cat 2*) approach in Resolve. Once an approach is created, a member of the PID Team will contact the person to discuss their enquiry.

Registering a discloser/potential discloser enquiry in Resolve

1. Select *Find Person >* search using the relevant details.
2. If there is no Person Record, select *New Person* and create a record (if the person wishes to remain anonymous – enter *Anonymous* in this field), then select *New Approach* and enter the relevant details.
3. In the person details select *do not survey.*
4. If a person record already exists, select *New Approach* and enter the relevant details.
5. Complete all mandatory fields with relevant details.
6. When you create a *New Approach* several fields will be auto-populated, including *Category*, *Received Date* (defaults to the date the approach is created)*, Due Date* and *Assigned to* (defaults to the person creating the Approach). If the *Received date* is not the date the Approach is created, ensure you update this field with the correct date.
7. Press the *Escalate* button at the top of the record to change the Approach to Category 2 (*Cat 2*) > Save.
8. Do not complete the *Caller Details - Organisation* field (this is not required).
9. In *Agency Details - Agency* field*,* enter OMBPID (Ombudsman PID). OMBPID is the Resolve code for all PID related enquiries.
10. In *Agency Details - Agency Ref* field, type the word PID**.**
11. Complete *How Received*, *How Found* and *Sensitivity* fields (select *Sensitivity > PID* for all discloser enquiries).
12. Enter a brief description of the enquiry in the *Initial Approach details* field.
13. Save the record.
14. Complete issue string > Press *New Issue* > Select PID > PID Inquiry > [type of inquiry] and then complete *Cause* and *Outcome* fields with the most appropriate selection to describe the type of enquiry.
15. Record all actions and ensure all relevant documents are attached to the record.
16. Closing the Approach:
    - Where the initial contact is about how to make a disclosure, provide advice and direct the person to the PID guidance material on the Ombudsman website > *Close Approach*.

- Where the person advises they want to make a disclosure, or the contact is clearly a disclosure > *Close Approach* > Create a new PID record > X-Ref the OMBPID Approach to the PID record > Assign the PID record to the individual who is supervising the PID Team's AOs with a Briefing Action to that individual. The supervisor will then assign the disclosure to an AO for assessment and include the date the allocation was given to the AO in the *Allocate AO* field in Resolve.

[redacted]

- Where the person advises they want to make a complaint about an agency's handling of a PID > update the Approach to a PID handling complaint (see instructions below) > Assign the complaint to the individual who is supervising the PID Team's IOs.
    1. In *Agency Details*, delete reference to OMBPID in the Agency field and enter the relevant agency.
    2. Save record.
    3. Select issue string > PID > PID Complaint > select most appropriate option/s.
    4. Record all actions and ensure all relevant documents are attached to the complaint record.
    5. Assign the complaint to the IOs' supervisor (or IO if you are the supervisor) with a Briefing Action to that individual.
    6. Save the record.
    7. Exit the record (do not press *Close Approach*).

6.3 PID enquiries allocated to 'Allocation PID' by other areas of the Office

Agency representatives, disclosers and potential disclosers may contact our Office via Office intake and complaint handling teams by calling 1300 362 072, by post or by completing an online complaint form.

All enquiries received by the complaints teams will be recorded as an OMBPID Approach and assigned to Allocation PID. A member of the PID Team will then assess the enquiry, categorise the Approach as either an agency enquiry or discloser enquiry, assign to an individual in the PID Team for action, and exit the Resolve record (do not press *Close Approach*).

7 Agency notifications – allocation decisions

Legislative obligations

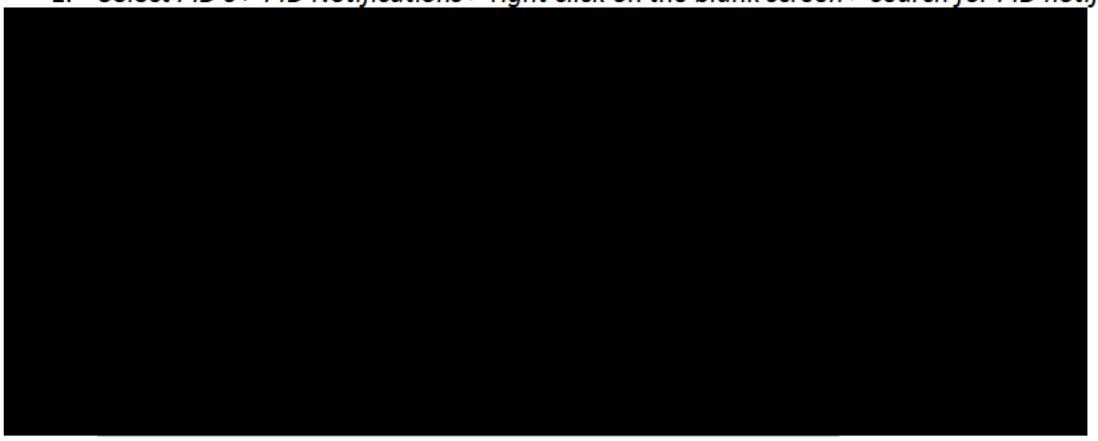
Section 44(1A) of the PID Act requires AOs to notify the Ombudsman of an allocation decision under s 43(1). AOs must notify our Office of:

- the allocation to the agency
- the information that was disclosed
- the suspected disclosable conduct (if any)
- the discloser's name and contact details, if they are known to the AO and if the discloser consents to the principal officer being informed.

Agencies should complete a *Form 1 – Notification of an allocation decision* (available on the Ombudsman's website). Notifications are sent to PID@ombudsman.gov.au.

Registering a PID Notification in Resolve

1. Select *PID's > PID Notifications > right click on the blank screen > search for PID notification.*



2. Before creating a *New PID Notification*, always run a search using the agency reference number or the discloser's name, to confirm that the notification has not already been recorded.

3. Scroll down to *Agency ref* and type in the PID reference number, select *Find Now*. If no search result appears > press the *New PID Notification* button and enter all the relevant details provided by the agency (note: green sections are mandatory fields that must be completed to close the notification).

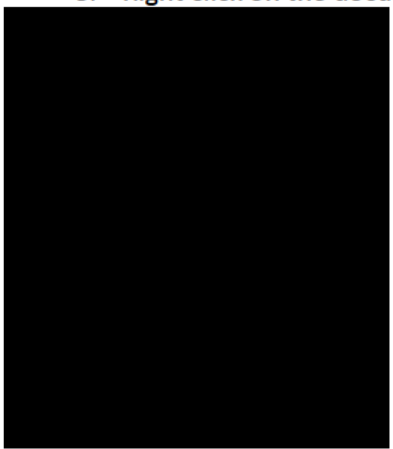
4. When you create a *New PID Notification* several fields will be auto-populated, including *Received Date* (defaults to the date the record is created), *Due Date* (field will automatically calculate 90 days from the *Disclosure allocated* date on first save of the record) and *Assigned to* (defaults to the person creating the notification). If the *Received date* is not the date the Resolve record is created, ensure you update this field with the correct date.

5. Complete the *Agency Information*, *Disclosure information* and *Summary* (Copy and paste the Summary of Information from the Form 1 into the F2 Full Screen field). Once complete, press Save

6. Complete the *Disclosable conduct within the PID* section. Select *New Issue* > select relevant instance of disclosable conduct from drop down list > Save > Exit drop down box. Repeat this process until all the kinds of disclosable conduct within the PID are recorded.

7. Attach all relevant documents to the Resolve record > Documents tab. Drag and drop the email containing the Notification of allocation form into Incoming Emails and Email Attachments.

8. Right click on the document file that has been created and select *Document Properties.*



9. In the *Comments* section (large blank field), number and describe the document (for example: 01. Email – Agency allocation notification).
10. Close all Actions.
11. Close the PID Notification (Note: the PID Notification can be reopened if needed).

8 Extension requests

Legislative obligations

Section 52(1) of the PID Act requires PID investigations to be completed within 90 days after the disclosure is allocated to the agency concerned. The Ombudsman may extend, or further extend, the 90-day period by such additional period as the Ombudsman considers appropriate (s 52(3)). Both agencies and disclosers can apply for an extension of time. The Ombudsman may also provide an extension at its own initiative.

We request that extension applications be made at least **10 business days** before the due date for the PID investigation. The Ombudsman **cannot** grant an extension after the current investigation end date has passed.

In making an assessment, the Ombudsman will consider all relevant information. However, the Ombudsman may decline to grant an extension request where an agency has not provided clear reasons for the request, or where the investigation appears to have been subject to unreasonable or unexplained delay.

Agencies must inform the discloser of the progress of an investigation as soon as practicable once an extension is granted (s 52 (5)(b)). The Ombudsman is required to notify the discloser of a decision to grant an extension request (s 52 (5)(a)).

Agencies should complete a *Form 3 – Request for an extension of time* (available on the Ombudsman's website). Extension requests are sent to PID@ombudsman.gov.au.

Registering an extension request in Resolve

1. Select *PID's* > *PID Notifications* > right click on the blank screen *> Search for PID Notification.*
2. Search by *Agency Ref Number* or *PID Discloser Name* or *Agency Display Name* and locate the relevant PID notification. Check that the allocation date on the PID notification record matches the date provided on the extension request form.
3. Re-open the PID Notification by pressing the *Re-open* button.
4. Click on the Extensions tab and press the *New Extension* button.

5. Complete all fields on the *PID Extension Entry* main page. These can usually be copied from the extension request form. If the originating document is a Word document, cut and paste the relevant text. If it is a PDF, cut and paste the relevant text into a Word document first to fix the formatting, then copy and paste into Resolve.

6. Enter the requested completion date in the white *Completion* box. Resolve will automatically calculate the number of *Extension Days* requested. Check the new date is not a weekend or public holiday.

7. Drag and drop the extension request email to PID Extension Entry > Documents tab > Incoming Emails.

8. Review the extension request and consider if it is a reasonable request.
9. Using the templates in Objective, draft notification letters to the agency (i.e. the person who submitted the extension request) and the discloser (if their contact details are known). If the discloser was initially anonymous but the agency has identified them in the extension request, request the agency notify the discloser of the outcome of the request unless the agency has specifically notified OMB that the discloser is willing to be identified.
10. Save letters in the PID Extension Entry > Documents tab > Outgoing Documents.

11. Right click on each document file that has been created and select *Document Properties.* In the *Comments* section (large blank field), number and describe each document (for example: 01. Extension request – notification to agency (granted)).

12. To make changes to Outgoing Documents > right click > select *Check Out and Edit Document* > make changes to the Word document > press Save in Word before closing Word > right click on the document file in Resolve > *Check In*.
13. Create a PDF version of correspondence by opening the Word document, and then using the Export function. Save this PDF to your own computer's Documents folder.
14. Send PDF letters to the agency and the discloser. Remember to send these from the PID mailbox using your PID signature block.
15. Drop a copy of your emails attaching the PDF letters into Outgoing Documents in Resolve. Enter a number and description for these documents (for example: 03. Email to agency attaching extension letter).
16. Return to the Main tab of the PID Extension Entry and enter your *Decision* in the green field at the bottom. Enter the new completion date.
17. Update the due date at the top of the reopened PID Notification
18. If there are any open Action items (such as the Briefing note), you will need to close these.
19. Close the PID Extension Entry.
20. Close the PID Notification Entry.
21. Delete the extension request from the PID mailbox.

8.1 Applying for an extension where OCO is investigating a PID

Where a disclosure investigation has been assigned to an OCO IO, and the IO requires an extension of time to complete the investigation, the following procedure applies:

1. Where practicable, 3 weeks before the due date, the IO should discuss the need for an extension with their supervisor and then complete a Form 3 (available on OCO's website). (If the discloser's contact details are known to the IO, the IO should also notify the discloser of the need to seek an extension.)
2. The Form 3 should be saved to the Resolve Extension Record or a locked-down folder in Objective dedicated to that PID investigation.
3. The IO should prepare a draft letter addressed to the discloser from the Senior Assistant Ombudsman (SAO) for the Branch (who will be the decision maker on the extension request) and save it to the Resolve Extension Record or the same folder in Objective. (Standard content can be found in the letter templates folder in Objective.)

4. The IO should email a link to the Objective folder (or provide the Resolve Extension Record details) to the PID Director, who will then forward the extension request and draft letter to the SAO for consideration.
5. Once the SAO has made a decision on the extension request, and if the SAO has decided to grant an extension, the IO should notify the discloser of the decision (i.e. send a copy of the decision letter to the discloser signed by the SAO to the discloser). In the IO's covering email, or by telephone, they should also provide the discloser with a brief progress update as required by s 52(5)(b) of the PID Act.
6. If applicable, in the PID record in Resolve > right click > *New Action* > *PID Notify discloser of extension*.
7. The IO should complete the extension record in Resolve, close it, and update the due date in the PID Notification record, all final documentation is to be saved to Resolve Extension record (see instructions above).

9 Agency notifications – decisions not to investigate disclosures

Legislative obligations

Section 50A of the PID Act requires agencies (including the OCO) to notify the Ombudsman of a decision not to investigate or further investigate a disclosure. Decisions not to investigate or investigate further are made under s 48 of the PID Act. Agencies must notify our Office of the decision and the reason for the decision.

Agencies should complete a *Form 2 – Decision not to investigate or not investigate further* (available on the Ombudsman's website). Notifications are sent to PID@ombudsman.gov.au.

Registering a s 48 decision in Resolve

1. Select *PID's > PID Notifications > right click on the blank screen > Search for PID Notification.*

2. Search by *Agency Ref Number* or *PID Discloser Name* or *Agency Display Name* and locate the relevant PID notification. Check that the allocation date on the PID notification record matches the date provided on the s 48 notification form.
3. If you cannot locate the relevant PID Notification, contact the Agency to request the Form 1 *(Notification of allocation*).
4. Once you have located the correct PID Notification record, Re-open the record and click on the s 48 Decision tab.
5. From the agency email, copy and paste the relevant s 48 decision data into the record, including the date the decision under s 48 of the PID Act was made and the date the discloser was notified of the decision.

[redacted]

6. Select *New Decision Issue* > Select the relevant reason for deciding not to investigate or investigate further. If you have selected s 48(1)(f), another drop down box will appear > *Legislation Investigated Under* > Select the relevant legislation as identified in the agency email or Form 2.

[redacted]

7. Attach all relevant documents to the Resolve record > Documents tab. Drag and drop the email containing the Notification of s 48 decision form into Incoming Emails and Email Attachments > right click on the document file that has been created and select *Document Properties* > Enter a number and description in the *Comments* section (for example, 02. Email – Agency s 48 decision).
8. Close all Actions.
9. Close the PID Notification. [redacted]

10 Agencies seeking consent to allocate a PID to OCO for investigation

The PID Team may receive enquiries from agencies seeking AO consent to allocate a PID to OCO for investigation. When this occurs, the PID Team creates an OMBPID approach in the first instance.

1. Click here to access part 5 of the SOP and follow steps 1-11. Once completed, it should look like this:

[redacted]

2. The PID Director will then have a discussion with the agency about the request before deciding whether to assign the OMBPID approach to an AO to provide consent to the allocation.

3. If the PID Director decides that it is not appropriate for the PID to be handled by OCO, the PID Director will advise the agency of this, record any discussions or correspondence on the OMBPID approach, and close the OMBPID approach. The PID Director is able to ask a member of the PID team to do this.

4. If the PID Director considers that it is appropriate for OCO to handle the PID, the AO will send an email to the agency providing consent to allocate, for example:

   "Dear …

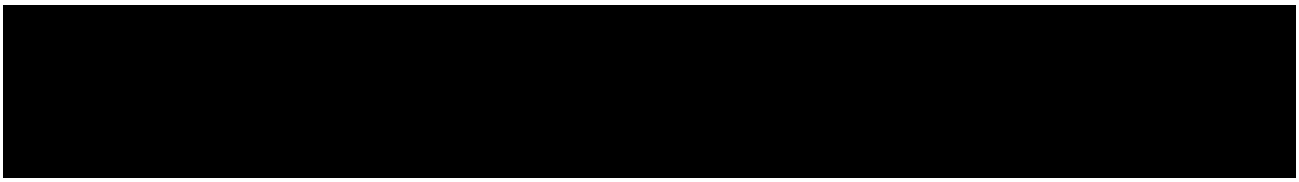
   As an authorised officer of the Office of the Commonwealth Ombudsman, I consent to the allocation of the disclosure referred to [below/in your email of …].

   Please forward the disclosure and any supporting documentation or materials provided by the discloser to PID@ombudsman.gov.au.

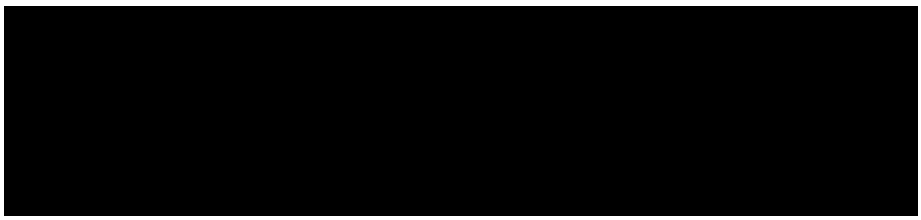
   Regards

   [AO signature block]"

5. The AO will then save the email to the OMBPID approach > Documents tab > Outgoing Documents > right click on document file created > select *Document Properties* > number and describe the document in the *Comments* field.



6. The AO will complete the issue string as follows:



7. Save > *Close Approach*.
8. Once the OMBPID approach has been closed, the AO will right click in the Actions tab > *New Action* > *Follow Up* > Make a note to follow the agency up if OCO has not received the PID documents within 4 weeks > Set Action due date for 4 weeks. Keep the Action open.

9. Once OCO receives the PID documents from the agency, the AO will close the Follow Up Action and notify their supervisor or PID Director who will decide who will handle the PID.

10. In the meantime, the AO's supervisor will create a new PID record (Note: The PID record *Received date* is the date OCO received all of the PID documents and the allocation to the OCO is completed). Click here to follow the instructions on how to create a new PID record in Resolve.
    - Cross-reference the OMBPID approach to the PID record.
    - Complete PID workflow in Resolve > *Assess PID* > *Is this disclosure a PID* > *Yes - Agency referral* > *PID Allocate* > *Ombudsman*. Press *PID Invest* button at the top of the record.
    - Create a corresponding PID Notification and X-Ref it to the PID record.
    - Assign the PID record to the PID Director (or relevant Assistant Director) with a Briefing Action explaining that the PID will need to be referred to an investigator.

10. Authorised Officers – assessing and allocating disclosures

Legislative obligations

Section 43 of the PID Act outlines an AO's obligations upon receiving a disclosure. Once an AO has received a disclosure of suspected wrongdoing, the PID Act requires that the AO undertake an initial assessment of the disclosure to determine if the information is an internal disclosure. Once the AO is satisfied the OCO is an authorised internal recipient of the disclosure and that the disclosed information is an internal disclosure, they must allocate it for handling under the PID Act.

AOs must use their best endeavours to decide an allocation within 14 days of the disclosure being made to the AO.

All potential disclosures received by the OCO are initially assessed by members of the PID Team who are not AOs. Once a team member has determined that the intention of the person in contacting the OCO is to make a disclosure, they will create a new PID record and assign the record to the AOs' supervisor (or if appropriate to the AO), who will decide which AO to assign the disclosure to for assessment. If there is an associated OMBPID Approach, the team member will X-Ref it to the PID record and then close the OMBPID Approach.

Access to PID records is restricted to members of the PID and officers who have a need to have access to PID records.

Creating a new PID in Resolve

1. Select *Find Person* > Search to see if the discloser has previously approached our Office. If so, double click on the Person Record > Select *New PID*.
2. If the discloser is not in the Resolve database, create a *New Person* record and then select *New PID*.
3. If the discloser is anonymous, click on the *New Anon PID* button at the top of Resolve.
4. Complete the mandatory data fields and save the record.
5. Attach written submissions and emails in the Documents tab.
6. Save any conversation records as an Action.
7. Create a Briefing Action explaining that the disclosure is being referred for assessment by an AO.
8. Assign to an AO.
9. Save record.

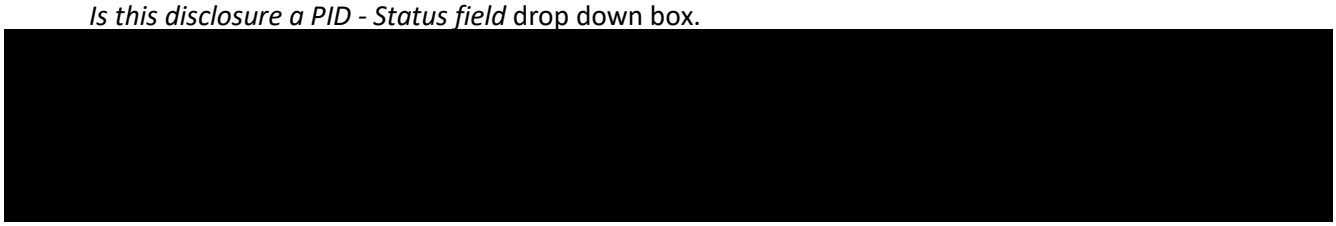
AO steps for assessing and allocating a PID

1. Send acknowledgement email to discloser (where practicable) using the template (A337131) in Objective.
2. Press the *Assess PID* button in the PID record.
3. Assess whether the OCO is an authorised internal recipient, for disclosures that do not relate to this Office ie the disclosure does not relate to the conduct of this Office and the discloser does not belong, or last belong to this Office, there is a requirement the discloser believes on reasonable grounds that it would be appropriate for the disclosure to be investigated by the Ombudsman (s 34, Item 1, Column 2(c)). If the OCO is not an authorised internal recipient, the disclosure should not be further assessed and the discloser notified of the decision.
4. If the OCO is an authorised internal recipient, using the template (A335685) in Objective, complete an initial assessment of the information provided to determine if the disclosure is a PID. The threshold test to determine a PID is as follows:
    - the discloser must be a public official as defined in s 69 of the PID Act
    - the information disclosed must tend to show, or the discloser believes on reasonable grounds that the information tends to show, one or more instances of disclosable conduct (as defined in s 29 of the PID Act); and

    For further guidance, see section 5 of our Office's Agency Guide to the *Public Interest Disclosure Act 2013*.

5. Once the assessment is completed, copy and paste your initial assessment decision into the *Comments* field of the workflow action *PID Is this disclosure a PID*.

6. Assign a Briefing to your supervisor requesting QA of your initial assessment.
7. Following QA of your assessment, record your decision (Yes or No) in the workflow action *PID Is this disclosure a PID - Status field* drop down box.



8. If all criteria are met and the disclosure is assessed to be a PID, the AO must allocate the PID. *(In most circumstances a PID will be allocated to the agency concerned for investigation.*

). Prior to allocating the disclosure to an agency, an AO must seek consent from the agency to the allocation and request the discloser's consent to provide their name and contact details to the principal officer:
   - Draft and send the following correspondence:
     i. Letter to Agency - seek consent from the agency to the allocation *(email agency's generic PID inbox or an agency AO – see template email in Objective)*
     ii. Letter to Discloser - seek consent from the discloser to provide their name and contact details *(s 44(2) assessment and allocation decision letter in Objective)*

9. If the criteria are not met and the disclosure is not a PID, the discloser must be informed of this decision:
    - Draft and send the following correspondence:
        i. Letter to Discloser - Notification not to allocate *(s 44(3) template in Objective)*
10. On receiving agency and discloser's consent, the AO will then allocate the disclosure to the agency:
    - Draft and send the following correspondence:
        i. Letter to Agency – allocation to agency *(s 44(1) – see template in Objective). (Where the PID is to be allocated to OCO, the AO will send an email to the PID Director confirming the allocation. The PID Director will forward this email to the Ombudsman as principal officer.)*
        ii. Letter to Discloser – allocation to agency *(s 44 – see template in Objective)*
11. Complete the Transfer to Agency workflow.
    [redacted]
12. Save all correspondence from the agency and discloser in *Incoming Emails* in the PID record.
13. Save all correspondence from the AO to the agency and discloser in *Outgoing Documents* in the PID record.
14. Complete Issue String fields with alleged disclosable conduct type/s. *Cause* is *PID > PID disclosure. Outcome* is *PID > Allocation to [Ombudsman/agency/other oversight body].*
15. Create a corresponding PID Notification (Refer to the separate 'Create a Corresponding PID Notification' guide in Objective, noting that notifications for PIDs allocated by OCO are slightly different).
16. Close the PID record.

<u>AO reconsideration</u>

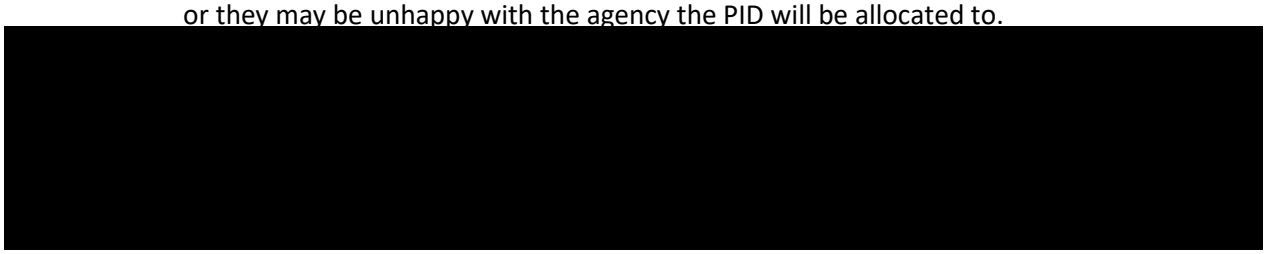
If a discloser is dissatisfied with an AO's allocation decision or a determination that the disclosure is not an internal disclosure, the discloser may request the AO reconsider their decision. The discloser can do this by providing the reasons why they disagree with the AO's decision, in writing, within seven days of the date they receive the s 44(2) assessment and allocation decision letter.

<u>Steps for undertaking a reconsideration</u>

1. Find relevant PID record.
2. Right click in Actions tab > *Add Procedure* > *PID Reconsideration*.

[redacted]

3. Determine if the reconsideration is a *Partial* or a *Full* reconsideration:
    a. A *partial* reconsideration is where an AO has assessed that matter is a PID, but the discloser may be dissatisfied that only some of their allegations meet the threshold or they may be unhappy with the agency the PID will be allocated to.



    b. A *full* reconsideration is where an AO has determined that the disclosure does not meet the threshold of an internal disclosure.
4. Complete a re-assessment of the disclosure based on the new information or reasons provided by the discloser in support of a reconsideration.
5. Additional workflow pages will load depending on the type of reconsideration chosen (Full or Partial) and the results of the reconsideration assessment.
6. For a *partial reconsideration* > *AO reconsideration decision* will be generated > Record your decision > Select *AO original decision affirmed* or *Revise AO original decision* from the drop down.
7. For a *full reconsideration* > *Recon – Is this a PID?* will be generated > Record your decision > Select Yes or No in the *Status field* drop down.
    - Where the outcome of the full reconsideration is Yes (disclosure is a PID):
        - Save the changes to the record.
        - Exit the closed record.
        - Re-enter the record – this will trigger a re-open of the PID record and allow the AO to continue the workflow required for allocating the disclosure.
8. Complete all relevant workflows as required.

11. Disclosure investigations

The information in this section relates to disclosures about other agencies that are allocated to our Office under the PID Act for investigation. It does not relate to internal disclosures that have been made by current or former officials of the Office about alleged disclosable conduct within the Office (information about making an internal disclosure is available to staff on the intranet).

11.1 Delegations

The Ombudsman's power to investigate (or to decide not to investigate) a disclosure has been delegated to staff at APS Level 5 and above. The instruments of appointment and delegation under the PID Act are available on the intranet.

11.2 Discretion not to investigate a disclosure

Once a disclosure has been allocated to an agency under the PID Act, s 47 provides that the principal officer of the agency (or their delegate) must investigate the disclosure, i.e. investigate whether there are one or more instances of disclosable conduct. This may include consideration of whether a different investigation or reinvestigation should be conducted under another law.

However, under s 48(1) of the PID Act, the principal officer or delegate may decide not to investigate, or further investigate, the disclosure if:

- the discloser is not, and has not been, a public official
- the information does not, to any extent, concern serious disclosable conduct
    - see 6.2.2.1 of our Office's Agency Guide to the *Public Interest Disclosure Act 2013* for guidance on the meaning of 'serious disclosable conduct'
- the disclosure is frivolous or vexatious
- the information is the same, or substantially the same, as information that has been, or is being, investigated as a disclosure investigation (either under the PID Act or a separate investigative power)
- the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that is being investigated under another Commonwealth law or executive power of the Commonwealth and it would be inappropriate to conduct another investigation at the same time
- the information concerns disclosable conduct that is the same, or substantially the same, as disclosable conduct that has previously been investigated under another Commonwealth law or executive power and there are no further matters that warrant investigation
    - our Office's view is that this ground may be relied on where a matter has previously been 'considered' by an agency under another process, even if it was ultimately not formally 'investigated'
- the discloser has advised that they do not want the disclosure to be investigated and the principal officer (or delegate) is reasonably satisfied that there are no matters that warrant investigation
- it is impracticable for the disclosure to be investigated:
    - because the discloser's name and contact details have not been disclosed, or
    - because the discloser refuses, fails, or is unable to give, for the purposes of the investigation, information or assistance that the investigator has requested from the discloser, or
    - because of the age of the information.

IOs should consider:

- whether or not it is open to them to exercise the discretion in s 48(1) of the PID Act not to investigate the disclosure (or some of the allegations in the disclosure)
- if none of the grounds in s 48 are applicable, whether they will investigate the disclosure under the PID Act or the Ombudsman Act (see below).

If an IO exercises the discretion in s 48 of the PID Act, they must notify the discloser (in writing) of the reasons for their decision, and any other courses of action that might be available to the discloser, as soon as reasonably practicable: see s 50. The IO should also complete the 's 48 Decision' tab in the corresponding PID Notification record.

11.3 Conducting a disclosure investigation

Disclosure investigations must be conducted in accordance with the requirements of the PID Act and the *Public Interest Disclosure Standard 2013* (PID Standard). IOs should also refer to our Office's published Agency Guide to the *Public Interest Disclosure Act 2013* to ensure that disclosure

investigations are conducted in accordance with our expectations of other agencies. This includes keeping a discloser reasonably informed of the progress of a disclosure investigation.

The Ombudsman's Office is an investigative agency with separate investigative powers for the purposes of the PID Act. This means that the Ombudsman may decide to investigate a disclosure under the Ombudsman Act instead of the PID Act (see below).

Regardless of whether our Office investigates a disclosure under the PID Act or the Ombudsman Act, the investigation is a 'disclosure investigation' (as defined in s 8 of the PID Act).

11.4 Standard of proof

The standard of proof in disclosure investigations is the balance of probabilities. When forming a view about whether the alleged disclosable conduct has occurred, the IO must determine whether it is more likely than not that the fact or allegation is true based on the evidence that they have gathered.

[redacted]

11.5 General observations – subject-matter jurisdiction

It is open to our Office to investigate a range of matters under the PID Act that would otherwise be limited by, or out of jurisdiction under, the Ombudsman Act. For example:

- s 5(2)(d) of the Ombudsman Act precludes our Office from investigating most Australian Public Service (APS) employment-related matters, but there is no such restriction within the PID Act
- we may investigate significant corruption issues under the PID Act, although the Ombudsman Act requires us to refer such allegations or information to the Australian Commissioner for Law Enforcement Integrity (s 6(17) and s 6(18) of the Ombudsman Act)
- we may investigate, under the PID Act, criminal matters that would otherwise be investigated under the *Defence Force Discipline Act 1982*
- we may investigate a disclosure about the Australian Federal Police (AFP) in the first instance, although the Ombudsman Act intends that we review the AFP's internal investigations.

11.6 General observations – agency jurisdiction

Under the PID Act, an agency includes a prescribed authority (s 71). This encompasses statutory agencies, corporate Commonwealth entities within the meaning of the *Public Governance, Performance and Accountability Act 2013*, and the Australian Prudential Regulation Authority (APRA).

If a disclosure about a prescribed authority (within the meaning of the PID Act) is allocated to the Ombudsman for investigation, s 5A of the Ombudsman Act provides that it is also taken to be a prescribed authority for the purposes of the Ombudsman Act. This means that some agencies or prescribed authorities that would otherwise not be subject to an Ombudsman investigation are brought into jurisdiction by virtue of s 5A of the Ombudsman Act.

However, our Office has no jurisdiction to investigate intelligence agencies under either the PID Act or the Ombudsman Act.

11.7 Investigating under the PID Act

Requirements in the PID Act and PID Standard

A disclosure investigation under the PID Act must comply with the requirements of the PID Act and the PID Standard.

The IO must inform the discloser that the IO is required to investigate the disclosure, and of the estimated length of the investigation (see s 50 of the PID Act).

An investigation under the PID Act may be conducted as the IO thinks fit, subject to the requirements of the PID Standard. However, if the investigation relates to fraud or an alleged breach of the Code of Conduct, the IO must also comply with s 53(4) or s 53(5) of the PID Act.

Requests for information from an agency or a person (including the discloser) are made under s 53(2) of the PID Act. Section 57 protects witnesses in disclosure investigations from criminal and civil liability.

An investigation must be completed within 90 days after the disclosure was allocated to the Ombudsman (s 52(1) of the PID Act). If the IO requires more time, they should follow the instructions for making an extension request in Part 8 above.

The IO, as the Principal Officer's delegate, is required to inform the discloser about the progress of the investigation if the 90-day period is extended, or further extended (section 52(5)(b)). This can be done verbally or in writing. In addition to this statutory requirement it is also recommended that IOs provide regular progress updates to the discloser over the duration of the investigation.

The IO should ensure they have, where appropriate, afforded procedural fairness to the agency and the subject(s) of the disclosure investigation. IOs should refer to the guidance in our Office's Agency Guide to the *Public Interest Disclosure Act 2013* (in particular 7.3.3.8, 7.3.3.9 and 7.4.1).

Upon finalising the investigation, the IO must prepare a report under s 51 of the PID Act, which sets out:

- the matters considered in the course of the investigation
- the duration of the investigation
- the IO's findings (if any)
- the action (if any) that has been, is being, or is recommended to be, taken
- any claims made about, and any evidence of, detrimental action taken against the discloser, and the agency's response to those claims and that evidence.

In addition to the requirements in the PID Act, the PID Standard:

- outlines specific requirements when conducting interviews with witnesses

- requires an IO to decide whether evidence is sufficient to prove a fact on the balance of probabilities (i.e. it is more likely than not that the fact is true)
- requires an IO to ensure that a finding of fact is based on relevant and logically probative evidence
- provides that the report under s 51 of the PID Act must, where relevant:
    - identify whether there have been one or more instances of disclosable conduct
    - identify any regulations, rules, administrative requirements or similar matters to which the disclosable conduct relates
    - explain the steps taken to gather evidence
    - set out a summary of the evidence, as well as any findings and recommendations made based on that evidence.

Redactions to the investigation report

Section 51(5) of the PID Act provides that the principal officer (or their delegate) may redact the following information in the discloser's copy of the report:

- material that is likely to enable the identification of the discloser or another person
- material that would be exempt under Part IV of the *Freedom of Information Act 1982* (FOI Act).

Do we provide a copy of the section 51 report to the agency?

As mentioned above, we do engage with an agency in relation to a PID investigation when there is the possibility of an adverse finding, or critical comments or recommendations relevant to the agency. We afford procedural fairness by giving the agency an opportunity to comment on the evidence considered and findings proposed relevant to the agency. We also inform the agency's Principal Officer of the investigation outcome as they relate to the agency.

Advising an agency at the conclusion of the PID matter

There are circumstances where it is reasonable to provide some limited information to an agency at the conclusion of a PID investigation or our handling of the PID matter. These include:

- Where the OCO is investigating a PID and the agency itself is the subject of the investigation, and we have engaged with the agency in relation to the investigation and there is no adverse finding or critical comments or recommendations, the agency should be formally advised of the outcome of the investigation as it relates to them. Suggested wording for such advice is:

    "Thank you for your assistance with my investigation of PID [insert reference number]. I am writing to notify you that I have now finalised my investigation and that I have not made any findings of disclosable conduct by the agency."

- Where an agency allocates a PID to the OCO and we don't approach the agency with a request for information, and there is no finding of disclosable conduct or critical comments or recommendations made, the IO should advise the agency as a courtesy when the matter is finalised. Suggested wording for such written advice is:

    "*I write in relation to the PID you allocated to the OCO [insert agency reference number if known] on [date] and wish to advise that we have now finalised our consideration of this matter*."

- Where an agency allocates a PID to the OCO and we do approach the agency seeking further information from the agency in relation to the PID, and there is no finding of disclosable conduct or critical comments or recommendations made, the IO should advise the agency as a courtesy when the matter is finalised, using the suggested wording above.

- Where the OCO receives a disclosure relating to another agency and allocates the matter to the OCO and we don't approach the agency with a request for information, and there is no finding of disclosable conduct or critical comments or recommendations made, it is not necessary to advise the agency the matter is finalised as they will not know of its existence.

- Where the OCO receives a disclosure relating to another agency and allocates the matter to the OCO and we do approach the agency seeking information, and there is no finding of disclosable conduct or critical comments or recommendations made, the IO should advise the agency as a courtesy when the matter is finalised, without advising them of our conclusion. Suggested wording for such written advice is:

  "I write in relation to the PID [insert reference number] to advise that we have now finalised our consideration of this matter."

- Where an agency (agency A) has allocated a PID to OCO about another agency (agency B), there is no requirement to inform agency A about the outcome of the PID.

Advising a person who is the subject of an allegation of the outcome of a PID investigation

If a person who is the subject of an allegation is aware of the allegation or that there has been a PID investigation (for example, where the OCO has requested information from that person for the purposes of the investigation), the investigation report should include a recommendation the person be formally advised of the outcome of the investigation as it relates to them.

Where there is no finding of disclosable conduct or critical comments or recommendations made, the investigator should write to the person stating the finding as it relates to them. Suggested wording for such advice is:

> *"Thank you for your assistance with my investigation of PID [insert reference number]. I am writing to notify you that I have now finalised my investigation and that I have not made any findings of disclosable conduct by you."*

If a person who is the subject of an allegation has not been made aware of the investigation, and there is no adverse comment or finding about the agency/person, there is no requirement to notify them of the outcome.

Advising a witness who provided assistance of the finalisation of a PID investigation

On occasion, a person who provided assistance as a witness in the course of a PID investigation will enquire as to the outcome of the investigation. While the OCO is unable to provide a witness (who is not the discloser) with information about the outcome of an investigation, it is reasonable to respond to such enquiries with general advice as to the status of a PID investigation. For example, once a PID investigation is finalised, suggested wording for such advice might include:

> *"Thank you for your enquiry and previous assistance with my investigation of PID [insert reference number]. I am writing to notify you that I have now finalised the investigation.*
>
> *While I appreciate you may be interested to know the outcome in this matter, I am unable to*

provide any further information for the following reasons:

- *section 51 of the Public Interest Disclosure Act 2013 (PID Act) requires that I give a copy to the discloser, however there is no corresponding provision with respect to witnesses*

- *section 65 of the PID Act makes it an offence for me to disclose or use any information I have obtained in the course of conducting the investigation, except in a limited range of prescribed circumstances."*

Should a different investigation be conducted under another law?

Subsection 47(3) of the PID Act provides that an investigation of a disclosure may include consideration of whether a different investigation (or reinvestigation) should be conducted by the agency or by another body under another Commonwealth law (including procedures established under a Commonwealth law). This includes, for example:

- Code of Conduct procedures created by agencies under s 15(3) the *Public Service Act 1999*
- Part V of the *Australian Federal Police Act 1979*
- *Defence Force Discipline Act 1982*
- *Defence Regulation 2016*.

In this situation, the IO's report under s 51 of the PID Act may state that:

- an investigation has been conducted on the papers
- no findings have been made by the IO
- the IO recommends that the agency conduct an investigation under the relevant law or procedure.

Adopting the findings of another investigation

Section 54 of the PID Act provides that an IO may adopt a finding set out in another investigation report (such as a Code of Conduct investigation).

If an IO adopts a finding of another investigation, they should clearly identify this in their report under s 51 of the PID Act.

11.8 Investigating under the Ombudsman Act (separate investigative power)

An IO should only decide to investigate a disclosure under the Ombudsman Act (our Office's separate investigative power) if the subject matter of the disclosure can be investigated under the Ombudsman Act. A decision not to investigate a disclosure should be made under s 48 of the PID Act (i.e. s 6 of the Ombudsman Act should not be used for this purpose).

The main advantage of investigating under the Ombudsman Act is the wider range of powers available under that Act (including coercive powers).

It is important to note that the secrecy and confidentiality provisions of the PID Act continue to apply where a disclosure is being investigated under the Ombudsman Act (in addition to the confidentiality provisions in the Ombudsman Act). The protections for disclosers and witnesses in the PID Act also continue to apply where the disclosure is being investigated under the Ombudsman Act.

The IO must notify the discloser of a decision to investigate their disclosure under a separate investigative power (s 50 of the PID Act). The IO must also notify the principal officer of the agency of the investigation under s 8(1) of the Ombudsman Act.

Investigation outcome

The IO's investigation outcome decision will be issued to the discloser under s 12(3) of the Ombudsman Act, and to the agency under s 12(4) of the Ombudsman Act where there is an adverse finding, comment or suggestion arising from our investigation for the agency's consideration.

In circumstances where there is no adverse finding, comment or suggestion arising from our investigation, we will notify the agency under s 12(1) of the Ombudsman Act that we have ceased investigating the matter.

11.9 Additional allegations made during a disclosure investigation

During a disclosure investigation, the discloser may raise additional allegations of disclosable conduct. If the allegations are similar to those already under investigation, it is open to the IO to incorporate them into the investigation. The IO should advise the discloser that this may extend the timeframe for the investigation.

If the allegations are not the same or substantially the same as those currently being investigated, the IO may advise the discloser that it is open to them to make a new disclosure to an AO of their agency or the Ombudsman's Office if the OCO if the OCO is an authorised internal recipient.

11.10 Third party inquiries

In some cases, the IO's assessment of the disclosure or the information provided by the agency may identify that a third party (who is not the subject of the disclosure) may have information relevant to the investigation. Third party inquiries can made under s 8(3) of the Ombudsman Act or s 53(2) of the PID Act. A request for information should state that our Office is not investigating the actions of the third party.

When making inquiries of a third party under the Ombudsman Act or the PID Act, the IO should carefully consider whether it is necessary to identify the discloser by name.

If investigating under the Ombudsman Act, it will generally not be necessary to advise the third party that we are conducting a disclosure investigation. We may simply state in our request for information that we are conducting an investigation and have been made aware that the third party may have some information that would assist that investigation.

11.11 Obligations to notify police

If, during a disclosure investigation under the PID Act or Ombudsman Act, the IO suspects on reasonable grounds that there is evidence of the commission of an offence against a Commonwealth, State or Territory law, they may disclose that information to a member of the relevant Australian police force.

However, it is mandatory to disclose the information to the police if the offence is punishable by imprisonment for a period of at least two years (s 56 of the PID Act).

If this situation arises, the IO should discuss the matter with the PID Team or the PID Team Director.

11.12 Reprisal action

This section applies where the OCO is investigating a PID in relation to itself or another agency.

Section 59(3)(a) of the PID Act requires principal officers to take reasonable steps to protect public officials who belong to their agency from detriment, or threats of detriments, relating to disclosures by those public officials. Our Office has published the following information sheets: Guide to assessing and managing the risk of reprisal and PID - Managing the risk of reprisal.

Agencies must establish procedures for assessing risks of reprisal, which outline what support will be made available to public officials who make disclosures: see s 59(1)(a) of the PID Act and s 7 of the PID Standard.

When conducting a disclosure investigation, the IO should ensure that the principal officer is aware of their obligations under the PID Act (for example, by discussing this with the appropriate agency contact).

Where the discloser wishes to remain anonymous, the IO can request that the agency provide details of a contact person whom the discloser may contact if they feel threatened. The IO can then provide those contact details to the discloser.

Allegations of reprisal action during a disclosure investigation

If the discloser alleges to the IO that they have been the subject of reprisal action, the IO should advise the discloser to raise this with the nominated contact person in their agency.

If the discloser is not willing to do this, the IO should advise the principal officer or agency contact person of the allegation so that the agency can take appropriate action in accordance with its obligations.

The IO can also advise the discloser of the provisions in the PID Act that enable them to make an application to the Federal Court or Federal Circuit Court to seek compensation, an injunction or other orders if they believe they have been the subject of reprisal action (ss 14–17 of the PID Act).

12. PID handling complaints

The PID Act provides that complaints may be made to the Ombudsman under the Ombudsman Act about the way:

- a disclosure is allocated (or a refusal to allocate a disclosure): Note 2 in s 42 of the PID Act
- a PID is handled: Note in s 46 of the PID Act
- additional obligations in the PID Act are complied with (or non-compliance with the additional obligations): Note in s 58 of the PID Act.

[redacted]

The role of our Office in assessing a PID handling complaint may include whether:

- the agency's handling of the disclosure was consistent with its obligations under the PID Act and PID Standard
- the reasonableness of any investigation which may include whether relevant lines of enquiry were undertaken
- the agency's actions and decisions were reasonably open to it
- the agency has taken reasonable steps to consider and respond to reprisal concerns

Our role is to review the administrative handling of a disclosure, it is not our role to review the merits of a decision, this includes the evaluation and weighting of the evidence.

> Merit review is the process by which a person or body, other than the primary decision-maker reconsiders the facts, law and policy aspects of the original decision and determines what is the correct and preferable decision.

As with general parliamentary complaints, our Office does not have the power to direct an agency to take a particular course of action in respect of a disclosure. However, if we consider that it is appropriate to do so, we can make comments and suggestions to the agency under the Ombudsman Act to improve its administration of the PID scheme, or if considered appropriate, to provide additional information to the discloser about the investigation undertaken or finding reached. Once finalised, a PID investigation/decision cannot be set aside or revisited unless subject to clear jurisdictional (legal) error. Relevantly, the OCO is not able to provide legal advice or legal opinion about agencies decisions under the PID Act.

12.1 Assessing a complaint

When assessing PID handling complaints, IOs should have regard to the OCO's Agency Guide to the PID Act and the general principles in the Office's Parliamentary Complaint Handling Procedures, [redacted]. If there is an inconsistency with the information in the PID SOP and the Parliamentary Complaint Handling Procedures, the procedures in the PID SOP are to be applied.

The following information may be relevant to the IO's assessment of a PID handling complaint, however what information to request from a discloser/agency is a matter for the IO to decide:

- the disclosure
- the AO's decision and reasons for the decision made
- the agency's decision not to investigate, or not further investigate the disclosure under s 48 of the PID Act
- the agency's investigation report under s 51 of the PID Act recommending the matters disclosed be investigated under another mechanism pursuant to s 47(3) of the PID Act

- a copy of the agency's investigation report under s 51 of the PID Act (often there will be redactions to the discloser's copy of the report. The IO may wish to consider whether to request a copy without redactions from the agency)
- correspondence between the discloser/complainant and the agency during the agency's handling of the disclosure
- details of the discloser's/complainant's concerns about the agency's handling of the disclosure.

12.2 Common complaints

Investigation under another law or procedure

A disclosure investigation may result in a recommendation that an investigation be conducted under another Commonwealth law or procedure (s 47(3) of the PID Act). As a result, the investigation report under s 51 of the PID Act may be quite brief. [redacted]

If the discloser complains about the outcome of the subsequent investigation, we may not be able to investigate that issue. For example:

- APS Code of Conduct investigations – our Office cannot investigate employment-related matters. The discloser or the subject of the disclosure may be able to request a review by the Merit Protection Commissioner.
- Investigations under the *Defence Force Discipline Act 1982* – s 19C(5) of the Ombudsman Act precludes our Office from investigating such matters.

However, our Office does have jurisdiction in respect of investigations under Part V of the AFP Act.

Allegations of reprisal

A complainant may raise concerns with our Office about reprisal action having been taken against them because of a disclosure. Ultimately, it is not our role to determine whether an offence may have been committed under the PID Act (i.e. whether a reprisal has in fact been taken within the meaning of the PID Act). We also do not have jurisdiction to investigate matters relating to APS employment including disciplinary action. However, we may consider whether the agency took reasonable steps to assess and respond to any allegations of reprisal.

The IO may also advise the complainant to seek independent legal advice about the options that may be available to them to pursue their reprisal claim, noting that the Federal Court and Federal Circuit Court have the power to make orders for compensation and reinstatement if satisfied that a reprisal has been taken.

Delay in allocating a disclosure or completing a disclosure investigation

The PID Act provides that:

- AOs should use their best endeavours to finalise an allocation decision within **14 days** of receipt of the disclosure: s 43(5).
- Investigations under the PID Act must be completed within **90 days** after allocation of the disclosure: s 52(1). An investigation is completed when the principal officer (or their delegate) has prepared a report of the investigation under s 51. An agency may request an extension of time from our Office under s 52(3) of the PID Act.

The IO may wish to consider:

- asking the discloser when they made their disclosure and for copies of any correspondence they received in response
- asking the PID Team to check if there is a record of any request(s) from the agency for an extension of time to complete a disclosure investigation
- [redacted]

Decision not to investigate a disclosure

The IO should consider whether the decision not to investigate the disclosure was reasonably open to the agency to make under s 48(1) of the PID Act and adequately explained to the discloser. [redacted]

Outcome of a disclosure investigation (including findings and recommendations)

Our Office's Agency Guide to the *Public Interest Disclosure Act 2013* at 2.7.7.1 outlines some of the circumstances in which a disclosure investigation may be considered inadequate, including where:

- the investigator showed bias or there was a strong apprehension of bias in how the investigation was conducted
- information that was reasonably available, relevant and materially significant was not obtained
- the findings or recommendations set out in the report were unreasonable on the basis of the information obtained during the investigation
- the investigation report did not set out findings or recommendations that should reasonably have been made on the basis of the information obtained.

The complainant should provide details of their complaint/specific concerns about the agency's handling of the disclosure for the IO's assessment. However, broadly speaking, it may be relevant for the IO to consider whether:

12.3 Deciding not to investigate a complaint

As with general parliamentary complaints, the IO may exercise the discretion in s 6 of the Ombudsman Act not to investigate a PID handling complaint. This may be where the complainant has not explained the reasons for their view the disclosure was not handled appropriately or the IO considers that an investigation is not warranted in all of the circumstances (for example, where the agency's actions and decisions were consistent with the PID Act and reasonably open to it).

12.4 Investigating a complaint

Agency contact arrangements

All email correspondence to a complainant/agency should be via PID@ombudsman.gov.au or where relevant, via a dedicated PID email account [redacted].

Our contact with the agency should be limited to the area that deals with PID matters (or to any person nominated by the agency's principal officer). If unsure, the IO should contact the PID Team to confirm agency contact arrangements.

Requests for information

IOs can consider whether it would be appropriate to conduct a preliminary inquiry under s 7A of the Ombudsman Act or whether to commence an investigation under s 8.

Review of decisions

A discloser may seek reconsideration and a review of an Ombudsman AO's decision on a disclosure. Similarly, a complainant may seek reconsideration and a review of an IO's decision on a PID handling complaint. See the PID *Processing review requests* document in Objective (A2230222) and the review process in the Office's Parliamentary Complaint Handling Procedures.

If there is an inconsistency with the information in the PID *Processing review requests* document and the Parliamentary Complaint Handling Procedures, the procedures in the PID *Processing review requests* document are to be applied.

12.5 Disclosures

If a review is requested in relation to a disclosure, it must be communicated to the PID Director, who will then assign the matter to a Review Officer in the PID Team. The review process and outcome is recorded in the PID record (right click > *New Procedure* > *PID Review*). Additional workflow pages will load depending on the outcome of the review – *Decision affirmed* or *Decision not affirmed*.

- Where the AO's decision is not affirmed:
    a. Save the changes to the record.
    b. Exit the closed record.
    c. Re-enter the record – this action will trigger a re-open of the PID record and allow the AO to reassess the disclosure.
    d. AO to continue the workflow required for reassessing the disclosure.
    e. Complete all relevant workflows as required.

12.6 PID handling complaints

If a review is requested in relation to the outcome of a PID handling complaint, the PID Team Member will press the *Review* button on the closed Approach and assign the automatically-generated Action to the PID Director with a brief explanation of the review request. The PID Director will then assign the matter to a Review Officer in the PID Team. The review process and outcome is recorded in the Review record attached to the original Approach.

12.7 Disclosure investigations

Where the OCO investigates a PID, the OCO cannot review its own handling of the PID under the PID Act. However, if the PID Director determines that it would be appropriate to conduct an administrative review of the IO's investigation of the PID, the OCO may conduct such a review.

13. PID Annual Reporting

Legislative obligations

Section 76(1) of the PID Act states that the Ombudsman must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to Parliament, a report on the operation of the PID Act during that financial year.

Section 76(2) of the PID Act outlines what the report must include.

- In relation to each agency, the report must include statements about the following:
    - the number of disclosures received by AOs of the agency during the financial year
    - the kinds of disclosable conduct to which those disclosures relate
    - the number of disclosure investigations conducted by the agency
    - the actions that the principal officer took in response to recommendations in reports relating to those disclosure investigations.
- In relation to the work of the Ombudsman and the Inspector-General of Intelligence and Security (IGIS) during the financial year, the report must include statements about:

- the number and nature of complaints made about the conduct of agencies in relation to disclosures
- the Ombudsman's performance of its functions under s 62 of the PID Act (assisting agencies)
- IGIS's performance of its functions under s 63 of the PID Act.

Please refer to the PID Annual Reporting Guide (A2274586) located in Objective for full reporting details and step-by step instructions on how to complete this reporting requirement.

14. Education and awareness activities

Legislative obligations

Section 62 of the PID Act requires the Ombudsman to conduct educational and awareness programs relating to the PID Act.

14.1 PID Forums

The PID Team holds regular forums for PID practitioners, including agency AOs, IOs, and PID Team Members. The forums aim to raise awareness and share practical information with PID practitioners to assist them to work more confidently and effectively in this specialised and often technical area. They are also an opportunity for PID practitioners to come together to share experiences, and gain tips and insights about what constitutes good practice in managing PIDs.

14.2 Agency briefings

The PID Team does not provide information/awareness sessions to individual agencies.